



JOINT LAND USE BOARD - BOROUGH OF DUMONT
80 WEST MADISON, DUMONT, NJ 07628
(201) 387-5034

NOTICE OF APPEAL
(USE VARIANCE APPLICATION FORM)

Date: June 25, 2020

Note: The application must be deemed administratively complete before it will be scheduled for a hearing. All requested information must be submitted for the application to be deemed complete.

Appeal is hereby made by the undersigned (check applicable item or items)

☐ from the action of the Building Inspector in refusing my application for a Building Permit, dated _____.

☒ for a special exception or variance from the terms of the Zoning Ordinance of the Borough of Dumont.

Appellant,	New Cingular Wireless PCS, LLC, One AT&T Way, Bedminster, NJ 07921		
	Name	Address	Email
Contractor (if any),	N/A		
	Name	Address	Email
Professional Preparing,	Judith A. Fairweather, Esq., PinilisHalpern, LLP 160 Morris Street, Morristown, NJ 07960		
	Name	Address	Email
		973-998-8677	jfairweather@pinilishalpern.com

1. Application relates: (check applicable item or items)

☒ Use

☐ Lot Area:

☐ Setbacks

☒ height

☐ Existing Building

☐ Proposed Building

☐ Other

**NOTICE OF APPEAL
(USE VARIANCE APPLICATION FORM)**

2. Brief description of real estate affected: See attached Proposal.

Location (Street address, Block and Lot No.): 2 Sunset Street (2 New Milford Avenue), Block 821; Lot 1.02

Lot size: 12,344 Sq ft.

Present use: Telecommunications

Present Zoning classification: LI

Present improvements upon land: Existing two carrier monopole

3. If this is an appeal from action of the Building Inspector, complete the following: N/A – Applicant is a conditionally permitted use, however does not meet all of the conditions; this needs a use variance.

Date of determination made: _____

Your statement of alleged error of Building Inspector: _____

4. Action desired by appellant: (Give a brief description of your proposed use, including the number of professionals and or employees, the number of anticipated clients or customers per hour, and anticipated days and hours of business.) See attached Proposal.

5. Reasons appellant believes Board should approve desired action (refer to section or sections of ordinance under which it is felt that desired action may be allowed, and note whether hardship is (or is not) claimed, and the specified hardship). See attached Proposal.

6. Has previous appeal been filed in connection with these premises? ☐ Yes ☐ No

Unknown to Applicant

**NOTICE OF APPEAL
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7. Plans signed and sealed by the appropriate professional at a scale of 1 inch to 50 feet or better, clearly showing the following information:

- A. Existing Conditions Plan showing the existing conditions of the property.
- B. Proposed Conditions Plan showing the proposed improvements to the property. The proposed conditions plan must include:
 - A. Required Bulk and area regulations and the ability to meet;
 - B. North arrow and scale;
 - C. Proposed buildings or additions;
 - D. Proposed parking;
 - E. Proposed access to parking and building;
 - F. Approximate dimensions of lot and existing and proposed buildings;
 - G. Approximate setbacks of existing and proposed structures and parking areas from property lines;
 - H. Names of owners of adjacent lots;
 - I. Approximate distance from your property line to existing buildings on adjacent lots;
 - J. Uses on lots adjacent to property;
 - K. Location of public and private roads adjoining the property;
 - L. Location of existing or proposed easements;
 - M. Location of wooded areas and trees greater than 10" diameter;
 - N. Location of any wetlands or other natural features;
- C. Floor plan of the existing building and structures and any proposed buildings and structures showing dimensions of rooms, total square footages and proposed use of the rooms.

All of the above items must be submitted with the application. If you are requesting a waiver of any of these items, the waiver request must be in writing and state why you feel the waiver should be granted.

I hereby depose and say that all of the above statements and the statements contained in any papers or plans submitted herewith are true to the best of my knowledge and belief.

Signature of Person Making Service
Judith A. Fairweather, Attorney for Applicant

Signature of Property Owner(s)
Mary Ellen Romano

Sworn to and Subscribed before me this 29 day of June, 2020.

JODI M. MEZZINA

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 3/18/2021

Using Communication Technology
(P.L. 2020, C. 26)



JOINT LAND USE BOARD - BOROUGH OF DUMONT
80 WEST MADISON, DUMONT, NJ 07628
(201) 387-5034

NOTICE OF APPEAL
(BULK "C" VARIANCE APPLICATION FORM)

Date: June 25, 2020

Appeal is hereby made by the undersigned for a special exception or variance from the terms of the Zoning Ordinance of the Borough of Dumont

Appellant,	New Cingular Wireless PCS, LLC, One AT&T Way, Bedminster, NJ 07921	
	Name	Email
Owner,	Mary Ellen Romano, 19 Glengorra Court, Mahwah, NJ 07430	
	Name	Email
Attorney,	Judith A. Fairweather, Esq., PinilishHalpern, LLP 160 Morris Street, Morristown, NJ 07960	
	Name	Email
	973-998-8677 jfairweather@pinilishalpern.com	
	Address	Email

1. Application relates: (check applicable item or items)

☐ Lot Area: ☐ Setbacks: ☐ Existing Building ☐ Proposed Building
X Other – Height Variance, C or D3

2. Brief description of real estate affected: See attached Proposal.

Location (Street address, Block and Lot No.): 2 Sunset Street (2 New Milford Avenue), Block 821; Lot 1.02

Lot size: 12,344 sq. ft.

Present use: Telecommunications

Present Zoning classification: L1

Present improvements upon land: Existing two carrier monopole

**NOTICE OF APPEAL
(BULK "C" VARIANCE APPLICATION FORM)**

3. Action desired by appellant: Approval for the addition of an extension to the existing 121' monopole to a height of 131'. Also adding antennas to the top of the monopole for a top height of 133'. AT&T will place related equipment and a generator at the base of the monopole.
- _____
- _____
- _____

4. Supply a statement of facts showing why relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.) See attached Proposal.
- _____
- _____
- _____
- _____
- _____

5. Has previous appeal been filed in connection with these premises? ☐ Yes ☐ No

Unknown to Applicant

Note: Attach ten (18) copies of plan of real estate affected. Indicate location and size of lot, size of improvements now erected and proposed to be erected thereon, or other changes desired, also any other information required by the Joint Land Use Board. If more space is required, attach a separate sheet and make specific reference to the question being answered. In question 4, above, include the grounds for the appeal or reasons both with respect to law and for granting the appeal or the special exception or variance.

I hereby depose and say that all of the above statements and the statements contained in any papers or plans submitted herewith are true to the best of my knowledge and belief.

Signature of Person Making Service
Judith A. Fairweather, Attorney for Applicant

Signature of Property Owner(s)
Mary Ellen Romano

Sworn to and Subscribed before me this 29 day of June, 2020.

JODI M. MEZZINA

NOTARY PUBLIC OF NEW JERSEY
Commission Expires 3/18/2021

Using Communication Technology
(P.L. 2020.C.26)



LETTER OF AUTHORIZATION

ATC SITE # / NAME/PROJECT: 420554/Dumont NJ/OAA751530
SITE ADDRESS: 24 Sunset Street, Dumont, NJ 07628-2311
APN: 10-00821-0000-00001-01
LICENSEE: AT&T Mobility d/b/a New Cingular Wireless PCS, LLC

I, Margaret Robinson, Senior Counsel for American Tower*, operator of the tower facility located at the address identified above (the "Tower Facility"), do hereby authorize AT&T Mobility d/b/a New Cingular Wireless PCS, LLC, its successors and assigns, and/or its agent, (collectively, the "Licensee") to act as American Tower's non-exclusive agent for the sole purpose of filing and consummating any land-use or building permit application(s) as may be required by the applicable permitting authorities for Licensee's telecommunications' installation.

We understand that this application may be denied, modified, or approved with conditions. The above authorization is limited to the acceptance by Licensee only of conditions related to Licensee's installation and any such conditions of approval or modifications will be Licensee's sole responsibility.

Signature:

Print Name: Margaret Robinson
Senior Counsel
American Tower*

NOTARY BLOCK

Commonwealth of MASSACHUSETTS
County of Middlesex

This instrument was acknowledged before me by Margaret Robinson, Senior Counsel for American Tower*, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

WITNESS my hand and official seal, this 17th day of June, 2020.

NOTARY SEAL



GERARD T. HEFFRON
Notary Public
Commonwealth of Massachusetts
My Commission Expires
August 9, 2024

Notary Public
My Commission Expires: August 9, 2024

*American Tower includes all affiliates and subsidiaries of American Tower Corporation.

PROPOSAL

Applicant: New Cingular Wireless PCS, LLC ("AT&T")
AT&T Site: W-515
Property: Block 821; Lot 1.02
2 Sunset Street (2 New Milford Avenue)
Dumont Borough, Bergen County, NJ

The applicant, New Cingular Wireless PCS, LLC ("AT&T"), is a federally licensed communications carrier which intends to modify the existing 121' tower by adding a 10' extension to the tower and adding 9 antennas and related equipment at the top of the extension for a top height of 133'. AT&T will place related equipment and a generator at the base of the tower. The tower is located on the above property is located in the LI Zone. This use is conditionally permitted in this zone however, AT&T does not meet all of the conditions. A three-carrier pole can be up to 120' in height this three carrier pole is 133'. Therefore, Applicant is seeking a use variance, height variance, variance for distance from a residential zone, preliminary and final site plan approval.

BACKGROUND

AT&T is in the process of building a nationwide network for wireless communication services and including First Net on all sites ("WCS"). AT&T has a federal license issued by the Federal Communications Commission ("FCC"). This license mandates that AT&T provide WCS coverage to its customers.

By way of background, WCS telephones, still commonly referred to as cell phones, operate by transmitting an extremely low power radio signal between the handheld unit and antennas operated by AT&T. In order to function, these antennas must be placed in strategic locations and at appropriate heights throughout the area. The antennas are connected to equipment shelters. To provide continuous service to its customers, there must be a continuous interconnected series of antenna sites, which create a grid pattern similar to a honeycomb. Each site must be placed within a limited area, which is not too close or too far from other sites.

FirstNet service will establish, operate, and maintain an interoperable public safety broadband network in this area. Currently, most police, firefighters and emergency medical services personnel often lack the interoperable communications capabilities needed to coordinate and communicate across agencies and jurisdictions when disaster strikes. FirstNet is designed to correct this problem. FirstNet is a nationwide high-speed broadband wireless network providing a single interoperable platform dedicated to first responders. FirstNet was created by the federal Middle Class Tax Relief and Job Creation Act of 2012. In July 2017, the State of New Jersey opted in to accept the FirstNet plan for deploying the nationwide public-safety broadband

network that will be built and managed by AT&T. The FirstNet network will strengthen and modernize public safety's communications capabilities, enabling them to coordinate and respond more quickly and effectively during day-to-day operations, as well as man-made and natural disasters. The ability to share data, videos and photos and to access apps can provide life-saving insights even before emergency personnel arrive on the scene. Law enforcement, firefighters, paramedics and other public safety officials in every state, county, locality and tribal area will benefit from the FirstNet network

In Dumont, there is no WCS coverage and inadequate service in the area surrounding the proposed site. Therefore, anyone attempting to use AT&T's WCS service would not be able to do so. Without the proposed site, AT&T is unable to provide coverage in the area, which it is mandated to do pursuant to its FCC license.

LEGAL ANALYSIS

In order to promote competition in the wireless telecommunications industry, Congress enacted the Telecommunications Act of 1996. The Telecommunications Act of 1996 ("TCA") is the federal law which governs the regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government. Specifically, the TCA, 47 U.S.C. § 332(c)(7)(B) provides in part:

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof ;

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) Any State or local government or instrumentality thereof shall act on any request for authorization to place, construct or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal

wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

The TCA further provides at § 253(a):

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

While there have been many cases relating to the TCA, the seminal case in New Jersey relating to the siting of telecommunications facilities pursuant to the TCA is Smart SMR of New York, Inc. d/b/a Nextel Communications v. Borough of Fair Lawn Board of Adjustment, 152 N.J. 309 (1998). As this Board is well aware, §70 of the New Jersey Municipal Land Use Law governs the granting of variances by land use boards in New Jersey. N.J.S.A. 40:55D-70, et seq. An applicant must satisfy the positive and negative criteria of the statute. To satisfy the positive criteria, an applicant must prove that the use promotes the general welfare because the proposed site is particularly suitable for the proposed use. See Medici v. BRP Co., 107 N.J. 1, 4 (1987). To satisfy the negative criteria, an applicant must demonstrate that the variance can be granted without substantial detriment to the public good and that the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. Id. at 21-22.

In Smart, the New Jersey Supreme Court held that in the case of telecommunications facilities, an FCC license established that the use promotes the general welfare. Smart at 336. In order to satisfy the remainder of the positive criteria, an applicant holding an FCC license must demonstrate that the use is particularly suited for the proposed site. Id. at 332. To demonstrate that a site is particularly suited for a telecommunications facility, an applicant must show need for the facility at that location. See, New Brunswick Cellular Telephone Co. v. Borough of South Plainfield, 160 N.J. 1 (1999).

The Supreme Court in Smart then turned to the negative criteria. As stated, to satisfy the negative criteria, an applicant must demonstrate that the variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. With telecommunications facilities, the Supreme Court

held that it would weigh “the positive and negative criteria and determine whether, on balance, the granting of the variance would cause a substantial detriment to the public good”. Smart at 332. This balancing requires the use of the Sica four part balancing test. Sica v. Board of Adjustment, 127 N.J. 152, 165-166 (1992). The prongs of the balancing test are as follows:

1. The Board must identify the public interest at stake. Some uses are more compelling than others.

2. The Board must identify the detrimental effect that will ensue from the granting of the variance.

3. In some situations, the Board may reduce the detrimental effect by imposing reasonable conditions on the use. Mitigating conditions can be imposed, the weight accorded the adverse effect should be reduced by the anticipated effect of the conditions.

4. The Board should then weigh the positive criteria and negative criteria and determine, whether, on balance, the grant of the variance would cause a substantial detriment to the public good.

The beginning impetus for the drive to the next generation of wireless communications began with a Memorandum authored by President William Jefferson Clinton to the heads of all Federal executive departments and agencies which was released October 13, 2000. In his Memorandum, the President established a national priority for a modern wireless telecommunications network in the United States, stating:

[T]he value of wireless communications increased as the number of users and types of use increased. Today's second generation wireless technology increased services and information offered to users and increased competition among providers. Digital "personal communications services" (PCS) provided added messaging and data features, including such services as voice mail, call waiting, text messaging, and, increasingly, access to the World Wide Web. These first and second generation services increased productivity and reduced costs for thousands of businesses as well as Government agencies.

The next generation of wireless technology holds even greater promise. Neither the first nor the second generation of wireless technologies were designed for multi-media services, such as the Internet. Third generation wireless technologies [3G] will bring broadband to hand-held devices. Higher speeds and increased capability will lead to new audio, video and other applications, which may create what many are calling “mobile commerce” (m-commerce) that people will use in ways that are unimaginable today. Moreover, an international effort is underway to make it possible for the next generation of wireless phones to work anywhere in the world.

Memorandum of Advanced Mobile Communications/Third Generation Wireless Systems, 3 Pub. Papers 2171 (Oct. 13, 2000).

In his Memorandum, President Clinton ordered all Federal agencies and departments to take steps to facilitate the development and implementation of modern wireless communications. *Id.* In a corresponding Press Release, President Clinton declared as the public policy of the government to "allow consumers to enjoy a wide range of new wireless tools and technologies, such as hand-held devices that combine services like a phone, computer, a pager, a radio, a customized newspaper, a GPS locator, and a credit card." Statement on Action to Support the Third Generation of Wireless Technology, 3 Pub. Papers 2170, 2171 (Oct. 13, 2000). President Clinton's prescient vision was that "time is of the essence. If the United States does not move quickly to allocate this spectrum, there is a danger that the U.S. could lose market share in the industries of the 21st century." *Id.*

President Clinton's initiative was expanded upon in 2009 when the Federal Government allocated billions of dollars for broadband services. President Barack Obama unveiled his Wireless Expansion Plan declaring that "we can't expect tomorrow's economy to take root using yesterday's infrastructure." President Obama stated in his State of the Union Address, in January 2010, that within the next five years carriers "will be able to deploy high-speed wireless to 98 percent of the population". He addressed the need for "a firefighter who can download the design of a burning building onto a handheld device; a student who can take classes with a digital textbook; or a patient who can have a face-to-face video chat with her doctor".

REASONS FOR RELIEF

In this case, AT&T has proposed to install its proposed wireless attachments on an extension of the existing tower on the subject. The property is located in the LI Zone. As set forth in Smart, AT&T is a federally licensed carrier; therefore, the proposed site promotes the general welfare. However, to satisfy the remainder of the positive criteria, it must demonstrate the particular suitability of this site. This site is particularly suitable because it alleviates a gap in AT&T's network, provides First Net service to the community, and takes advantage of the existing structure. AT&T will provide radio frequency engineering testimony at the hearing before the Board, which will demonstrate that there is inadequate coverage and service in the area surrounding the proposed site. Therefore, there is a gap in the area and a need for the proposed site. (See, AT&T v. Borough of Ho-Ho-Kus, 197 F.3d 64, 70 (3rd Cir. 1999), holding that zoning decisions have the effect of prohibiting wireless services if they result in significant gaps in the availability of wireless services). AT&T clearly requires this site to provide coverage pursuant to its FCC license.

As for the negative criteria, the proposed site will not be a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. There are similar utility structures with wireless attachments throughout Dumont. The proposed site will not produce any noise, vibration, smoke, dust, odors, heat, or glare. The facility will be located on an existing public utility tower. It will not require any municipal services such as water, sewer, police or fire and will require only infrequent maintenance. The

site will not have any adverse impacts on adjoining properties. In fact, the proposed site will provide improved wireless communications in the area. Wireless telephones enhance safety by allowing people to report accidents and crimes. They also provide an enhanced ability for people to communicate on both personal and business matters. On balance, as required by Sica, the public benefit far outweighs any potential detrimental effect of the site.

In summary, AT&T has met both the positive and negative criteria by showing that the proposed facility promotes the general welfare, is particularly suited to the site and does not result in any impairment to the zoning ordinance and master plan. In light of the foregoing, AT&T respectfully requests that its application be granted.

CORPORATE OWNERSHIP DISCLOSURE STATEMENT
NEW CINGULAR WIRELESS PCS, LLC

- I. In accordance with *N.J.S.A. 40:55D-48.1 & 48.2*, please be advised that New Cingular Wireless PCS, LLC is owned by AT&T Mobility II LLC.
- A. AT&T Mobility II LLC, which has a business address at 1025 Lenox Park Blvd., NE, Atlanta, GA 30319, is owned by Centennial Communications Corp; AT&T Mobility LLC; BellSouth Mobile Data, Inc. and New Cingular Wireless Services, Inc.
1. Centennial Communications Corp, which has a business address at 1025 Lenox Park Blvd., NE, Atlanta, GA 30319, is owned by AT&T Inc.
 - a. AT&T Inc., which has a business address at 208 S. Akard Street, Dallas, TX 75202, is a publicly traded corporation with no individual or entity holding a 10% or greater interest.
 2. BellSouth Mobile Data, Inc., which has a business address at 1025 Lenox Park Blvd., NE, Atlanta, GA 30319, is owned by AT&T Inc. (disclosure information for this entity is provided above).
 3. AT&T Mobility LLC, which has a business address at 1025 Lenox Park Blvd., NE, Atlanta, GA 30319, is owned by SBC Telecom, Inc.; SBC Long Distance, LLC; and BellSouth Mobile Data, Inc.
 - a. SBC Telecom, Inc., which has a business address at 208 S. Akard Street, Dallas, TX 75202, is owned by AT&T Teleholdings, Inc.
 - i. AT&T Teleholdings, Inc., which has a business address at 208 S. Akard Street, Dallas, TX 75202, is owned by AT&T Inc. (disclosure information for this entity is provided above).
 - b. SBC Long Distance, LLC, which has a business address at 208 S. Akard Street, Dallas, TX 75202, is owned by SBC Telecom, Inc. (disclosure information for this entity is provided above).
 - c. Disclosure information for BellSouth Mobile Data, Inc. is provided above.
 4. New Cingular Wireless Services, Inc., which has a business address at 1025 Lenox Park Blvd., NE, Atlanta, GA 30319, is owned by AT&T NCWS Holdings, Inc.
 - a. AT&T NCWS Holdings, Inc., which has a business address at 1025 Lenox Park Blvd., NE, Atlanta, GA 30319, is owned by BellSouth Mobile Data, Inc. (disclosure information for this entity is provided above) and SBC Telecom, Inc. (disclosure information for this entity is provided above).

June 18, 2020
02:28 PM

DUMONT BOROUGH
Tax Account Detail Inquiry

Page No: 1

BLQ: 821. 1.02
Owner Name: ROMANO, MARY ELLEN

Tax Year: 2020 to 2020
Property Location: 2 NEW MILFORD AVENUE

Tax Year: 2020	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
Original Billed:	2,081.24	2,081.24	1,912.50	0.00	6,074.98
Prelim Adjust:	246.74-	246.74-	0.00	0.00	493.48-
Total Billed:	1,834.50	1,834.50	1,912.50	0.00	5,581.50
Payments:	1,834.50	1,834.50	0.00	0.00	3,669.00
Balance:	0.00	0.00	1,912.50	0.00	1,912.50

Date	Qtr	Type	Code	Check No	Mthd	Reference	Batch Id	Principal	Interest	2020 Prin Balance
		Description								
		Original Billed						6,074.98		6,074.98
08/15/19	1	Adjustment	080			12539	62 CBJ2019	246.74-	0.00	5,828.24
		Value: 26,900-								
08/15/19	2	Adjustment	080			12539	63 CBJ2019	246.74-	0.00	5,581.50
		Value: 26,900-								
02/05/20	1	Payment	001	3569	CK	13075	13 WINDOW	1,834.50	0.00	3,747.00
05/05/20	2	Payment	001	3611	CK	13294	49 WINDOW2	1,834.50	0.00	1,912.50

Total Principal Balance for Tax Years in Range: 1,912.50

I verify that this information accurately reflects
municipal tax records

Frank Berardi
Tax Collector
Dumont Borough
Bergen County



D. Mati